

**BEFORE THE
PHYSICIAN ASSISTANT COMMITTEE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues)	Case No. 1E-2009-196792
Against:)	
)	OAH No. L2009030610
)	
STEVEN ROBERT NOAKES)	
)	
)	
Applicant.)	
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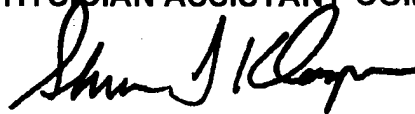
DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted as the Decision and Order by the Physician Assistant Committee, Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on August 20, 2009.

ORDERED July 21, 2009

PHYSICIAN ASSISTANT COMMITTEE



Steven Klompus, P.A., Chair

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In the Matter of the Statement of Issues
Against:

STEVEN ROBERT NOAKES,

Respondent.

Case No. 1E-2009-196792

OAH No. L2009030610

PROPOSED DECISION

Stephen E. Hjelt, Administrative Law Judge, Office of Administrative Hearings, State of California heard this matter in San Diego, California, on May 26, 2009.

Heidi R. Weisbaum, Deputy Attorney General, Office of the Attorney General, State of California, represented complainant Elberta Portman, the Executive Officer of the Physician Assistant Committee, Medical Board of California, Department of Consumer Affairs, State of California.

Respondent Steven Robert Noakes was present throughout the administrative proceeding and represented himself.

On May 26, 2009 the matter was submitted for decision to the Administrative Law Judge.

FACTUAL FINDINGS

License History

1. Respondent is not licensed by the Physician Assistant Committee (PAC). On or about October 8, 2008, the PAC received an application for licensure as a Physician Assistant (PA) from Steven Robert Noakes. In the application, Noakes certified under penalty of perjury to the truthfulness of all statements, answers and representations in the application.

Jurisdictional Matters

2. On February 27, 2009, complainant Elberta Portman, the committee's Executive Officer, signed the Statement of Issues in her official capacity.

The Statement of Issues alleged that: Noakes was convicted of two separate violations of California Vehicle Code section 23152 (b) (Driving Under the Influence or DUI) within a five month period in 2008. In the first incident, respondent's blood alcohol level was measured at .23 and .24 respectively. In the second incident, respondent's blood alcohol level was measured at .20 and .21 respectively. The Statement of Issues alleges that the two convictions violate various provisions of the Business and Professions Code and the California Code of Regulations that pertain to practice as a Physician Assistant and that the violations establish current unfitness to practice the profession of a Physician Assistant. The Business and Professions Code sections that pertain to Physician Assistants are referred to as the Physician Assistant Practice Act (PAPA).

In the ordinary course, the Statement of Issues and other required jurisdictional documents were served on Noakes, who timely filed a notice of defense and requested a hearing.

On May 26, 2009, the record was opened. Jurisdictional documents were presented. Stipulations were received, oral testimony was taken, documentary evidence was introduced, closing arguments were given, the record was closed, and the matter was submitted.

Steven Robert Noakes

3. Noakes is 43 years old. He was born in Danville, Arkansas. He is currently finishing his 25th year in the United States Navy (USN). He is bright and articulate. He is a combat veteran of both Iraq and Afghanistan. Life in the Navy has been both a blessing and a curse. The blessed side allowed him to discover that he had exceptional clinical skills and organizational talents as a PA. It gave him intense meaning in his life. For the last 25 years, it became his identity. But for a brief and isolated period of alcoholic misadventure, he has been an exemplary member of the military. The cursed side created a military culture in which admitting that you were in pain, either physical or emotional, was often viewed as a sign of personal weakness. When he began to feel the anxiety and depression that were tip-offs to the presence of Post Traumatic Stress Disorder (PTSD), he ignored them. He stuffed them back down his throat. Eventually, his anxiety and depression led to intense feelings of social isolation and withdrawal. He turned to self medicating with alcohol to cope with the powerful and progressively overwhelming pain he was in.

4. Noakes has taken advantage of the excellent educational opportunities provided in the USN. He received a BS degree in psychology from Regent's University which is affiliated with the USN. In or about January 2000, he secured a BS degree as a Physician Assistant through the USN which was awarded by the University of Nebraska. He then received his MS as a Physician Assistant from the University of Nebraska in 2003.

5. Over the last 25 years, respondent has spent approximately 15 years in the San Diego area on various deployments and assignments. As of June 1, 2009 he has completed one year at the Marine Corps Recruit Depot (MCRD) in San Diego. He is currently living with his wife and three children in Scripps Ranch, a suburb of San Diego.

6. Respondent's clinical skills as a PA have never been questioned. In fact, based upon the performance evaluations received in evidence and the testimony of his superior officers in the Navy, respondent's clinical skills have been, and remain, stellar. A performance evaluation from exhibit A-11 in evidence, is indicative of how he is regarded. The *Comments on Performance* signed on January 31, 2009 contain the following language:

"Inspiring Naval Officer and talented clinician, LT Noakes "hit the ground running" and rapidly integrated himself into the daily operations at Branch Medical Clinic, MCRD. He consistently provides exceptional quality patient care in a facility responsible for primary and acute care services for over 20,000 MCRD recruits annually.

-As Division Officer of Acute Care Area (ACA), he expertly supervised 6 Hospital Corpsmen (HM) and personally managed the medical care of 900 patient encounters. He spearheaded projects to update the SOP, standardized the HM Coverage Bags, and provided training to ensure uniform reporting of field incidents to the ACA resulting in accurate reporting and communication between the ACA staff and the Field HM covering recruit training.

-Committed mentor and counselor, frequently sought out by junior staff members for training and guidance in medical and military protocols and procedures.

-Hand picked to investigate the disproportionate number of Command personnel who were deemed non deployable. The culmination of this research resulted in 40% increase in deployable personnel and recognized several additional "detection" opportunities to ensure care in a more streamlined fashion. His labor directly enhanced the Command's capabilities to meet the operational needs in support of Global War on Terrorism."

7. The testimony of respondent's commanding officer was consistent with the job evaluation referenced above. Karlwin Matthews, M.D. is a Commander in the United States Navy (USN). He has been a physician for the past 14 years. After graduating from Stanford University Medical School, Dr. Matthews completed a family medicine residency program at Camp Pendelton, California and then did a Fellowship at the Uniformed Services University of the Health Sciences in Bethesda, Maryland. He oversees the medical care provided to marine recruits at MCRD. He has been respondent's supervisor since June 2008. He is well aware of respondent's two DUI convictions. In the time he has supervised respondent he has never seen any evidence of alcohol or substance abuse. The DUI convictions, according to Dr. Matthews, are inconsistent with respondent's character. He has found respondent to be dependable, effective and efficient. Respondent currently operates with a great deal of responsibility. Respondent provides patient care as well as acting as a liason to resolve disputes with his Marine counterpart at MCRD. His skills and judgment are such that Dr. Matthews feels comfortable allowing respondent to become the senior medical officer (Matthews' current job assignment) when Matthews leaves in June 2009 until a replacement

arrives in October 2009. When questioned about respondent's work ethic, Dr. Matthews testified that a recurrent problem for Command has been the loss of medical providers at MCRD due to war-zone deployment. When this has happened, respondent has put in the extra time without complaint. When asked why he agreed to appear and testify, Dr. Matthews said: "Some people are worth fighting for, and you are one of them."

8. Louis Gilleran, M.D. also offered testimony on respondent's behalf. Gilleran is a Commander, Medical Corps, United States Navy. After medical school, he completed an internal medicine residency at the Cleveland Clinic and received a Masters of Public Health (MPH) from Tulane University. For the last 20 months, Gilleran has been the head of the Clinic at MCRD. As such, he supervises approximately 15 M.D.s and 15 P.A.s. In the last year, respondent has worked under Gilleran. Over the last 5 years, their paths often crossed at meetings and conferences. He finds respondent extremely dependable and has never seen any sign of substance abuse. He does not believe the DUIs are an accurate reflection of respondent's character. In Dr. Gilleran's words, "They did not fit what I know about you."

9. Dr. Gilleran's testimony was very important for the purposes of evaluating respondent's claims of rehabilitation. Gilleran confirmed that respondent notified him of the DUIs and that Gilleran watched respondent very closely to observe any sign of continuing problems. Gilleran opined that respondent is very much an asset to Navy Medicine, that his work ethic is impeccable and that his organizational and clinical skills are "superb." Gilleran is well aware of the need for a licensed PA to be both clinically skilled and not impaired by substance abuse problems.

10. Gilleran further testified that the Navy (and military) culture has changed quite a bit in recent years concerning alcohol and substance abuse in general. Two-martini lunches at the Officers Club are a thing of the past. It is a given that, because of the stresses involved, there are fairly high rates of alcohol and drug problems in the Navy. Today, the Navy comes down very hard, especially on Officers. Today, in the Navy, there is generally a Zero Tolerance policy. If "this" i.e., two DUIs, happens to an officer, that officer should not expect to see his or her next promotion. It is not uncommon in today's Navy for respondent's convictions to lead to dismissal from the service. Indeed, respondent is waiting on the judgment of the military command about his future in the service. There is no question that his "career" in the Navy is over. He will never be promoted again. The only question that remains unanswered is whether he will be expelled from the Navy. This may happen even though the primary problem identified is Post Traumatic Stress Disorder (PTSD) and not substance abuse, and even though his rehabilitative efforts have been excellent.

11. Matthews and Gilleran impressed this administrative court with their candid assessment both of respondent and life in the Navy and the Marines during the extreme stress of wartime service. They have the needs of the patients as their highest priority and demonstrated a clear understanding of the Committee's need to insure safe and reliable practice from those it licenses. They both demonstrated an awareness of the difficulty and risk posed by a Physician Assistant who has substance abuse problems. They hold

respondent in very high regard but did not appear and testify in order to help whitewash or minimize the significance of respondent's conduct.

Noakes's Substance Abuse Problems

12. Labeling is always problematic in substance abuse cases. What a person is labeled often determines how they are sanctioned in the criminal or administrative courts. How one is labeled also can determine what is necessary to show rehabilitation. If someone is an "alcoholic" or a "drug addict" then licensing Boards and Committees demand, quite rightly, that an applicant or licensee engage in the long, rigorous and demanding programs of Alcoholics Anonymous or Narcotics Anonymous. If someone has an isolated period in their life where they are suffering from a diagnosed mental illness, and have a criminal conviction (or two) associated with that timeframe, then it may not be appropriate to demand that an applicant or licensee do the 12 step program of Alcoholics Anonymous to satisfactorily demonstrate rehabilitation and current fitness to practice. Much depends on a cold, dispassionate review of all the facts. The context in which violations occur matters greatly.

13. Noakes has two DUI convictions stemming from two separate incidents less than six months apart in 2008. From the information before this administrative court, it seems more likely than not that his alcohol related convictions were the products of his undiagnosed at the time PTSD and other psychological problems. That is what the Navy has concluded after a fairly extensive work up and review. They have concluded that his alcohol use was a symptom of his anxiety and depression from combat stress. Because decisions about whether respondent is "fit for duty" can have grave and catastrophic consequences if he is not, the Navy strives to do their evaluations in a thorough and sophisticated manner.

14. Although the 2008 DUI convictions are the primary source of concern for the Committee, there are other factors that must be considered. The first is a DUI that respondent sustained 20 years ago. Due to the age of this conviction, respondent was unable to secure documents relating to it. He tried and was told by the court that files from that long ago no longer existed. But, respondent did sustain a criminal conviction for driving a motor vehicle after he had been drinking in 1987. He did not realize the significance of what happened in 1987 until he applied for a license with the California Board of Registered Nursing. His application was denied because he failed to disclose the conviction. Based on his testimony at the hearing and his answer to question on his application for licensure as a PA, it is clear that respondent suffered an alcohol related conviction in 1987. On his application, he referred to it as "omission of DUI on application" as the reason for denial. The second comes from the rough, stream of consciousness narrative respondent submitted which was marked for identification as exhibit A-13. This narrative was initially created as a quasi-therapeutic tool to help respondent understand why his life was as it was. It is exceptionally well written and very self-revelatory. Respondent refers at one point to the time between his deployments to combat zones and working at the clinic in San Diego. In talking about friendships, he wrote:

"During this time Sheldon Sloane had taken over the Directorship for the clinic and Bill Reynolds also became part of the staff. Those guys made this time bearable for

me. We began to have a social life with each other. That is to say that Bill and I would get drunk and Sheldon would try and take care of us. And so that went on for the next year. And my frustration and apathy began to grow. During this time I guess Bill began to experience some emotional issues. He asked for help and was diagnosed with having Post Traumatic Stress Disorder. He tried to talk about it with me. I listened just like my comrades did when I tried to convey my medevac story, but I did not understand. I could not understand how that experience could affect him that way. I never felt like I was in danger, so how could his perceptions be that different from mine? I am embarrassed to say today that I actually thought less of him as a man. I was an idiot, and I wish I could go back in time to be the friend to him that he needed. I am truly sorry."

15. Unlike some areas of medicine, there is no specific or definitive test to determine if someone has the disease known as alcoholism. And, despite this administrative court's familiarity with substance abuse issues, the record in this case is uncertain about whether respondent is an alcoholic. However, there is one certainty that can be derived from this record. Respondent has had problems in the past with his use of alcohol. These problems, when they have occurred, reflected an abysmal lack of judgment. These problems have reappeared in the last year. Respondent needs to continue to address them through an evaluation in Diversion.

Noakes Convictions

16. The facts and circumstances of his two criminal misadventures are important to chronicle in some detail.

A. On February 16, 2008, at approximately 2:40 a.m. respondent was found passed out behind the wheel of his vehicle, which was stopped in the lane of traffic at an intersection. A police officer awakened respondent, noticed an odor of alcohol, and asked respondent to get out of the car. As he attempted to comply, he lost his balance and almost fell. The officer did not perform a field sobriety test (FST) due to respondent's obvious intoxication. Respondent was arrested for driving under the influence. The results of a breath test to determine ethanol level in his blood was .23/.24. This is approximately three times the legal limit.

B. On May 3, 2008, around noon, respondent was stopped for driving erratically on the freeway. A motorist had called 911 about a driver weaving unsafely. The officer asked respondent for his license which respondent was unable to produce. The officer ran a DMV check and discovered respondent's license was suspended due to a prior arrest for driving under the influence. Respondent was asked to exit his vehicle. His gait was unsteady. He was given a FST and performed it poorly. He was then arrested for driving under the influence of alcohol and driving on a suspended license. The results of a breath test to determine ethanol level in his blood was .20/.21. This is well above the legal limit of .08.

These two incidents ultimately resulted in the two convictions sustained on the same day in different courts. They reflect a profound lack of judgment and represent a shameful chapter in the life of respondent. For those moments when he drove impaired, he placed the unsuspecting public at risk of harm. If the people of the State of California are entitled to anything, it is the expectation that those licensed in the healing professions demonstrate good judgment. Respondent's behavior on these two occasions demonstrated an absolute and complete abandonment of judgment. What they reflected was an elevation of his own selfishness over the needs of anyone else.

17. On July 28, 2008, imposition of sentence in both cases was suspended. The sentences given were to run concurrently. Noakes was placed on five years' probation, 10 days in a public service program, a multiple conviction rehabilitation program, the MADD Victim Impact Program and fines.

Other Matters

18. Noakes claims that he took his last drink on May 3, 2008, the date of his last arrest. There is nothing in the record that would suggest anything to the contrary. In fact, respondent's efforts since May, 2008 and his testimony and demeanor while testifying are completely consistent with someone who has turned their life around and is currently taking all necessary steps to build a future from himself and his family.

19. Noakes has no history of any patient complaints. Noakes has no history of any complaints presented by any other licensed practitioner.

20. Noakes presented himself as a Navy "lifer." He enlisted at 17 and has spent the last 26 years in uniform. He acknowledges it was a good fit for him. He excelled in every assignment and rose rapidly through the ranks. While on the USS Ford in 1993, he was chosen "sailor of the year." In 1995, while teaching at the Naval School of Health Science, he was selected as instructor of the year. He was deployed to Iraq in 2003 and did another war tour to Afghanistan in 2006. He is a highly decorated Naval Officer.

21. When he returned to San Diego from Afghanistan in 2006, he began to experience signs of anxiety and depression. He became more and more isolated. He also became consumed with arrogance and self pity. Noakes' testimony established that he was involved in an increasingly maladaptive pattern of self medicating with alcohol. He was very dysphoric, unhappy at home and at work, but did not seek any kind of help. After his first arrest, he told his superiors immediately and he was placed on administrative leave. He sat at home filled with guilt and self pity. The military had been his life and he "knew I had just ended my career." He went before the Captain's Mast, a form of non-judicial punishment and an adverse judgment was issued and became part of his permanent file. He was ordered to get a psychiatric evaluation and alcohol counseling. Then the second DUI happened. Respondent was already taking a fair amount of psychotropic medication at the time. However, he was feeling tremendous anxiety about getting on the freeway to drive to Los Angeles to see his daughter. His solution to deal with the anxiety was to drink, and then drive. As a result of the second DUI, the Admiral was required to commence a "Show Cause

for Retention" proceeding which will determine if respondent will be allowed to remain in the Navy.

22. Respondent testified and submitted documentary evidence regarding his recovery activities. It strongly supports a finding that he is more than merely compliant with the terms and conditions of his criminal probation. He attends more AA meetings on a weekly basis than he is required to. He is not just going through the motions. His current level of performance is consistent with someone who is highly motivated to avoid future criminal misadventures.

23. Respondent testified and submitted documentary evidence regarding his current mental and physical performance. Respondent's exhibit A-1 in evidence summarized what appears to be a very accurate assessment of respondent's current functioning. Helen Ann Holley, Ph.D. is a clinical psychologist who has seen and treated respondent in the wake of his terribly aberrational and self destructive detour in 2008. On March 18, 2009 she wrote:

"1. LT Noakes has completed a course of successful treatment for Major Depression Single Episode, Post Traumatic Stress Disorder, and Alcohol Dependence for self-medicating PTSD. He is currently in the process of applying for state licensure to practice as a Physician's Assistant, which requires a current status report of his mental health.

2. Over the course of his treatment, LT Noakes has diligently worked to overcome mood and behavioral symptoms associated from his traumatic combat experiences. He has made substantial progress and all his conditions, Major Depression, PTSD and Alcohol Dependence have gone into full remission. He is extremely committed to his career and family, and has shown no vulnerability to relapse this past year.

3. As a Clinical Psychologist with sixteen years of service to Navy Medicine, 10 years active duty and 6 years as a GS working for Naval Medical Center San Diego, it is my clinical opinion that LT Noakes is fully fit to perform his professional duties in military and civilian capacities."

24. Post Traumatic Stress Disorder is one of the most overused terms in the mental health field. It is now used to describe such a broad range of behaviors that the term is almost meaningless. The worst part about this over use is that it trivializes the true suffering of those actually afflicted with this most serious disorder. In respondent's case, he truly suffers from PTSD. He, in fact, exhibits the classic symptoms and his combat experiences are obvious precipitants. In Exhibit A-9, in evidence, a Navy psychiatrist wrote: "The patient has served in both Iraq and Afghanistan. His combat trauma exposure is significant. He presents with symptoms indicative of a serious combat stress injury and Major Depressive Disorder. He is not currently fit for worldwide deployment. Intensive treatment is required." It is fortunate that Noakes is responding well to his treatment regimen.

25. Noakes was contrite, but was very hesitant to accept the committee's minimum recommended level of discipline as set forth in its disciplinary guidelines. He was candid in his explanation.

26. The Physician Assistant Committee properly investigated and properly filed the Statement of Issues herein as part of its statutory obligation to protect the public from impaired or potentially impaired practitioners. The Board was appropriately carrying out its duties in insisting that this matter proceed to a full evidentiary hearing on the Statement of Issues. Cases involving alcohol and drug abuse often require an opportunity to place respondents and other witnesses under oath and expose them to the rigors of cross examination. The Factual Findings, Legal Conclusions and Order could not have been properly made without the opportunity to assess the demeanor and the credibility of the respondent under oath.

27. Decisions made following a Statement of Issues hearing involve the exercise of discretion by the administrative law judge sitting on behalf of a particular administrative agency. Under Government Code section 11424.50, subdivision (c), Factual Findings shall be based exclusively on the evidence of record and on matters officially noticed. Most importantly, "The presiding officer's experience, technical competence, and specialized knowledge may be used in evaluating evidence."

28. One of the recurring issues in disciplinary cases heard by the ALJs of the California Office of Administrative Hearings relates to substance abuse. The harm caused by alcohol and drug abuse is well documented and causes unnecessary social costs that run to the billions of dollars every year. These astronomical financial costs do not begin to cover the personal and human costs involved to families and communities from the harm caused by substance abuse. The potential for harm in the health care field from impaired practitioners is obvious. Agencies such as the Physician Assistant Committee or the California Medical Board must be ever vigilant in removing from practice those who pose immediate risk of harm to the public from their substance abuse. Furthermore, they must be careful to assess and evaluate those who in the past have had problems with drugs or alcohol, lest a prior problem resurface and place the public at risk.

29. Cause to impose discipline on respondent in the form of a denial of his application has been established as a matter of law. However, another question must be asked. What level of formal administrative discipline is required to insure public protection? On the basis of the full factual record and taking into consideration the administrative law judge's experience, technical competence and specialized knowledge accumulated over the past 20 years hearing these cases, the public would not be at risk from this practitioner if he were licensed and subject to terms and conditions of probation.

30. There are as many pathways to sobriety and maturity as there are to excuse and denial. Although Alcoholics Anonymous (AA) and Narcotics Anonymous (NA) provide a rigorous method by which some people get clean, sober and grow up, it is not the only way for all people. What matters most is a mature acceptance of responsibility for one's actions

and a recognition that alcohol and drug use is inconsistent with a successful life. Respondent does now exhibit such a mature understanding and recognition.

31. Some people are a quick study. They figure out things very quickly. They adapt and learn the lesson of a mistake without the need to re-experience it over and over again. At the other end of the spectrum is the small percentage of people who just cannot get out of their own way. In basic training in the Army, the drill sergeant would solemnly describe the two percent (2%) of recruits who "never got the message." There is a small percentage who would continue to stub their toe as long as they lived. This is troubling if you are such a person. Such a person has characterologic issues that are incompatible with holding a license in a sensitive health care environment such as a physician assistant. Respondent, despite his extremely serious lapses in judgment, does not appear to be part of the two percent (2%).

Disciplinary Guidelines

32. The evidence established Noakes was recently convicted of two misdemeanor crimes which are substantially related to the qualifications, functions, and duties of a Physician Assistant; that Noakes crimes are substantially related to the functions, duties and responsibilities of a PA because they evidence, to a substantial degree, present or potential unfitness to perform the functions authorized by the license; that Noakes engaged in unprofessional conduct as that legal term of art is construed in administrative disciplinary matters; and that Noakes' convictions constitute grounds for denial of an application to practice as a physician assistant.

33. The PAC enacted a Manual of Disciplinary Guidelines and Model Disciplinary Orders. These guidelines, in their Third Edition, 2007 are intended for use by persons involved in setting administrative disciplinary terms for misconduct involving licensed physician assistants. Use of these guidelines helps ensure that the selected terms and conditions are appropriate and consistent with decisions reached in comparable disciplinary actions.

The committee recognizes that the recommended penalties and conditions of probation are merely guidelines, and that selecting conditions of discipline appropriate to individual cases may necessitate deviation from these guidelines. However, absent significant extenuating circumstances, the penalty and probation provisions included in the guidelines should be followed.

Any violation of the Physician Assistant Practice Act would constitute unprofessional conduct. Also, any violation of the Medical Practice Act that would constitute unprofessional conduct by a physician and surgeon is grounds for a finding of unprofessional conduct by a physician assistant. In addition to the grounds set forth in the Business and Professions Code, other grounds for disciplinary action are set forth in Title 16 of the California Code of Regulations.

For unprofessional conduct, self-abuse of drugs, and alcohol-related convictions, the maximum recommended sanction is revocation or outright denial; for these offenses, the minimum recommended sanction is revocation, stayed, with seven years' probation. Recommended terms and conditions of probation include: maintenance of drug records for review; an education course; maintenance of patient medical records; if warranted, suspension; if warranted, revocation of the privilege to dispense and/or issue scheduled drug orders; if warranted, surrender DEA Permit, if warranted, biological fluid testing; if warranted, diversion program; if warranted, community service; if warranted, ethics course; if warranted, clinical training program; if warranted, medical or psychological evaluation/treatment; if warranted, monitoring/supervision; if warranted, prohibited practice-setting; if warranted, restricted practice-patients; if warranted, on-site supervision; if warranted, case-by-case review of patients; and, if warranted, maintenance and review of drug records by supervising physician.

34. Rehabilitation is not an event but rather a process. The opportunity at a second chance has long and deep roots in our culture and our law. We do not insist that people wear the scarlet letter for a lifetime. But the opportunity at a second chance does not come automatically, simply earned with the passage of time. Rather, we all must earn our second chance. This is the core of the notion of rehabilitation. Society takes it as a given that we all make mistakes, some larger than others. When our mistakes are social mistakes, breaches of the criminal law, for example, society imposes certain disabilities on us. We are penalized for our conduct by incarceration, fines, probation, community service, etc. Implicit in this set of disabilities imposed by society is a deeper truth. Society no longer trusts us completely. We have lost, at least temporarily, the trust of the community that we can do the tasks of citizenship without some oversight, some monitoring. Furthermore, depending on the social breach and depending on one's job, society may say that the breach is such that one can't be trusted to continue working in a particular area. The social or legal breach is not consistent with the particular type of work one is engaged in.

35. Rehabilitation is a process by which an individual earns back the trust of the community. It is composed of two very different modes of change. The first is attitudinal and involves the demonstration of a change of mind and heart. The second involves changes in behavior. To establish the change of mind and heart, one must come to terms with the underlying criminal behavior. One must demonstrate an awareness and understanding that it was wrong and that it was harmful. One must accept responsibility for the actions, not blaming it on others or excusing it. One must, in a word, show remorse. To establish a change in behavior, one must demonstrate a track record of consistently appropriate behavior over an extended period of time. In this way, society has the benefit of making a considered judgment with sufficient evidence.

36. There is no specific formula to establish rehabilitation. Each case must be evaluated on its own unique set of factors. Depending on what the stakes are, society may ask for a more compelling demonstration of rehabilitation from some than others. This is particularly so in these cases involving requests for initial licensure to practice in a health care specialty such as a Physician Assistant. It may be that a simple statement of a person

that they have "figured things out" coupled with a testimonial letter from their minister or therapist would be sufficient in some settings, but not here.

37. The California Physician Assistant Committee is charged with licensing and regulating activity surrounding care for the sick and injured. It is an integral part of the healing arts and requires skill and judgment, lest those needing care and treatment be harmed. The population that is taken care of by licensees is vulnerable. The highest standard of ethics, judgment and competence is required of a Physician Assistant. For this reason alone, the Committee must scrupulously evaluate all such claims for licensure with an eye toward its paramount duty of public protection but at the same time acknowledging individual due process rights and the strong public policy in giving deserving people a second chance.

Evaluation

38. The evidence established the following: Respondent is an extraordinary man who richly deserves the rights that flow from licensure in California as a Physician Assistant. Respondent has faced and overcome numerous challenges in life. He has never met a hurdle that he eventually was unable to jump over. Respondent, as a veteran of military tours in both Iraq and Afghanistan, has experienced and endured the horrific side of combat. It is not surprising that he suffered from Post Traumatic Stress Disorder. Thankfully, he is feeling and doing much better. Respondent suffered two criminal convictions for DUI which are recent. His blood alcohol level in each was off the charts. His actions placed the unsuspecting public at high risk of harm. Respondent is currently on probation in his criminal cases. The length of probation will extend until July 28, 2013. Respondent, like all of us, is a work in progress. He is, in the vernacular of substance abuse, "in recovery." His testimony demonstrated a fair amount of insight into his circumstances and how he got to where he is. However, in terms of recovery, his is in its infancy. He tends to view issues like his sobriety as a "thing," that if broken, you fix with the right tool and you are done with it. In order to maximize the opportunity to fix what is broken, respondent needs to remain engaged in the process of recovery. Recovery is not an event. It is a process. Respondent deserves high marks for his total candor with the administrative court. He did not feel he would be interested in a license from the committee that might be probationary. If the Order below becomes the final Order of the Committee, respondent will have to make that choice.

LEGAL CONCLUSIONS

Purpose of Discipline

1. The purpose of administrative discipline is not to punish, but to protect the public by eliminating practitioners who are dishonest, immoral, disreputable, impaired or incompetent. (*Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 817.)

2. The purpose of the Medical Practice Act and the Physician Assistant Practice Act is to assure the high quality of medical practice; in other words, to keep unqualified and

undesirable persons and those guilty of unprofessional conduct out of the medical profession. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 574.)

Qualifications, Functions and Duties of a Physician Assistant

3. Physician Assistants must exercise that degree of skill, knowledge and care ordinarily possessed and exercised by members of the profession under similar circumstances. (See, *Williamson v. Prida* (1999) 75 Cal.App.4th 1417, 1424.)

4. The qualifications of a Physician Assistant are similar to those of a physician. These qualifications include honesty, integrity, and sound judgment. There is no other profession in which one passes so completely within the power and control of another as in a professional medical relationship. The relationship is built on trust and honesty. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 578.)

• *Applicable Statutory and Regulatory Authority*

5. Business and Professions Code section 480, subdivision (a) states in pertinent part:

“(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

“... The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made.”

6. Business and Professions Code section 3527 provides in part:

“(a) The committee may order . . . the suspension or revocation of, or the imposition of probationary conditions upon a physician assistant license after a hearing as required in Section 3528 for unprofessional conduct which includes, but is not limited to, a violation of this chapter, a violation of the Medical Practice Act, or a violation of the regulations adopted by the committee or the board. . . .”

7. California Code of Regulations, title 16, section 1399.521 provides in part:

"In addition to the grounds set forth in section 3527, subd. (a), of the code the committee may deny, issue subject to terms and conditions, suspend, revoke or place on probation a physician assistant for the following causes:

(a) Any violation of the State Medical Practice Act which would constitute unprofessional conduct for a physician and surgeon. . . ."

8. California Code of Regulations, title 16, section 1399.527 provides:

"When considering the suspension or revocation of a license or approval on the ground that a person holding a license or approval under the Physician Assistant Practice Act has been convicted of a crime, the committee . . . in evaluating the rehabilitation of such person and his or her eligibility for a license or approval shall consider the following criteria:

(a) The nature and severity of the act(s) or offense(s).

(b) The total criminal record.

(c) The time that has elapsed since commission of the act(s) or offense(s).

(d) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against such person.

(e) If applicable, evidence of expungement proceedings pursuant to section 1203.4 of the Penal Code.

(f) Evidence, if any of rehabilitation submitted by the licensee."

Relevant Decisions

9. Rehabilitation from alcoholism or other substance abuse is entitled to significant weight in mitigation if these elements are established: (1) the abuse was addictive in nature, (2) the abuse causally contributed to the misconduct, and (3) the practitioner has undergone a meaningful and sustained period of rehabilitation. (*Hawes v. State Bar of California* (1990) 51 Cal.3d 587, 597.)

10. As Chief Justice Lucas observed, "The amount of evidence of rehabilitation required to justify admission varies according to the seriousness of the misconduct at issue." (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.)

Cause Exists to Issue a Probationary License

11. Cause exists under Business and Professions Code sections 480 (a), 3527, 3528, to deny respondent's application for licensure as a Physician Assistant. The evidence established that Noakes was convicted of two serious misdemeanors for driving under the influence of alcohol in 2008. These convictions are substantially and adversely related to the qualifications, functions, and duties of a physician assistant, and they constitute unprofessional conduct.

This conclusion is based on all Factual Findings and on all Legal Conclusions.

12. Cause exists under Business and Professions Code sections 3527, 3528 and Title 16, California Code of Regulations, sections 1399.525 and 1399.526 to deny respondent's application for licensure as a physician assistant on the grounds that respondent's actions constitute unprofessional conduct in that his actions, to a substantial degree, evidence a present or potential unfitness of a person holding such a license or approval to perform the functions authorized by the license or approval in a manner consistent with the public health, safety or welfare. The evidence established that Noakes, by virtue of his DUI convictions evidenced present or potential unfitness to perform as a physician assistant in a manner consistent with the public health, safety or welfare which constituted unprofessional conduct.

This conclusion is based on all Factual Findings and on all Legal Conclusion.

The Appropriate Measure of Discipline

13. Cause exists under the Committee's disciplinary guidelines and under the aforementioned authority to deny Noakes application for a physician assistant certificate. However, by virtue of the strong showing of concerted efforts at rehabilitation, it would not be contrary to the public interest but to grant respondent a probationary license for five years on specified terms and conditions of probation designed to protect the public consistent with the disciplinary guidelines.

Noakes was recently convicted of two serious misdemeanors involving drinking and driving. He is on probation. He has complied with all terms and conditions of probation to date. His convictions have not been expunged. The misconduct giving rise to Noakes' convictions occurred less than two years ago. Noakes has been continuously on active duty in the United States Navy for the last 25 years. In many ways he has led an exemplary life and deserves great credit for having the courage to deal with his self destructive behaviors. Noakes was contrite at the hearing and submitted evidence establishing his superior skills as a Physician Assistant.

It was not established that Noakes is presently unfit to practice or that Noakes has ever engaged in any misconduct which resulted in actual patient harm. Noakes suffered from Major Depression, Post Traumatic Stress Disorder and a substance abuse problem. Each of these currently appear to be in remission, but he needs to have a much longer track record of

consistently appropriate behavior and a plan to avoid relapse and one which assures long term abstinence. Noakes showed he can be trusted on probation. However, it is not clear or certain that he has the deeply nuanced appreciation of the challenges he faces to preserve his sobriety. Early in recovery, many are seduced by the false confidence that they have it all figured out, only to stumble again through relapse.

This conclusion is based on all Factual Findings and on all Legal Conclusions.

ORDER

The application of Steven Robert Noakes for an unrestricted license as a physician assistant is hereby denied. However, a probationary license shall be issued to respondent subject to the following terms and conditions.

1. Probation- Respondent is placed on probation for five (5) years, beginning on the date respondent is issued a probationary license.
2. Alcohol - Abstain from Use- Respondent shall abstain completely from the use of products or beverages containing alcohol.
3. Biological Fluid Testing- Respondent shall immediately submit to biological fluid testing upon the request of the committee or its designee. Respondent shall pay the cost of biological fluid testing.
4. Diversion Program- Within 30 days of the effective date of this decision, respondent shall enroll and participate in the committee's Diversion Program until the program determines that further treatment and rehabilitation is no longer necessary. Respondent shall successfully complete the program. The program determines whether or not respondent successfully completes the program.

Respondent shall pay all costs of the program.

If the program determines that respondent is a danger to the public, upon notification from the program, respondent shall immediately cease practicing as a physician assistant until notified in writing by the committee or its designee that respondent may resume practice. The period of time that respondent is not practicing shall not be counted toward completion of the term of probation.

5. Psychological Evaluation/Treatment - Within 60 days of the effective date of this decision, and on a periodic basis thereafter as may be required by the committee or its designee, respondent shall undergo a psychological evaluation by a committee-appointed psychological evaluator who shall furnish a psychological report and recommendations to the committee or its designee.

Following the evaluation, respondent shall comply with all restrictions or conditions recommended by the evaluating psychologist within 15 calendar days after notification by the committee or its designee.

Respondent may, based on the evaluator's report and recommendations, be required by the committee or its designee to undergo psychological treatment. Upon notification, respondent shall within 30 days submit for prior approval the name and qualifications of a psychological practitioner of respondent's choice. Upon approval of the treating psychological practitioner, respondent shall undergo and continue psychological treatment until further notice from the committee or its designee. Respondent shall have the treating psychological practitioner submit quarterly status reports to the committee or its designee indicating whether the respondent is capable of practicing medicine safely.

Respondent shall pay the cost of all psychological evaluations and treatment.

If the evaluator or treating practitioner determines that the respondent is a danger to the public, upon notification, respondent shall immediately cease practicing as a physician assistant until notified in writing by the committee or its designee that respondent may resume practice.

For the purpose of the initial evaluation referenced above, a current and thorough evaluation prepared by a psychologist or psychiatrist in the United States Navy shall be deemed to satisfy this requirement of probation. Any such report or evaluation shall specifically include a statement to the effect that the author of the report has been provided, and read, a copy of the Proposed Decision after final adoption by the Committee.

6. Approval of Supervising Physician- Within 30 days of the effective date of this decision, respondent shall submit to the committee or its designee for its prior approval the name and license number of the supervising physician and a practice plan detailing the nature and frequency of supervision to be provided. Respondent shall not practice until the supervising physician and practice plan are approved by the committee or its designee.

Respondent shall have the supervising physician submit quarterly reports to the committee or its designee.

If the supervising physician resigns or is no longer available, respondent shall, within 15 days, submit the name and license number of a new supervising physician for approval.

7. Notification of Employer and Supervising Physician- Respondent shall notify his/her current and any subsequent employer and supervising physician(s) of the discipline and provide a copy of the accusation, decision, and order to each employer and supervising physician(s) during his/her period of probation, at onset of that employment. Respondent shall ensure that each employer informs the committee or its designee, in writing within 30 days, verifying that the employer and supervising physician(s) have received a copy of Accusation, Decision, and Order.

8. Obey All Laws- Respondent shall obey all federal, state, and local laws, and all rules governing the practice of medicine as a physician assistant in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

9. Quarterly Reports- Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the committee or its designee, stating whether there has been compliance with all the conditions of probation.

10. Other Probation Requirements- Respondent shall comply with the committee's probation unit. Respondent shall, at all times, keep the committee and probation unit informed of respondent's business and residence addresses. Changes of such addresses shall be immediately communicated in writing to the committee and probation unit. Under no circumstances shall a post office box serve as an address of record, except as allowed by California Code of Regulations 1399.523.

Respondent shall appear in person for an initial probation interview with committee or its designee within 90 days of the decision. Respondent shall attend the initial interview at a time and place determined by the committee or its designee.

Respondent shall, at all times, maintain a current and renewed physician assistant license.

Respondent shall also immediately inform probation unit, in writing, of any travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) days.

11. Interview with Medical Consultant- Respondent shall appear in person for interviews with the committee's medical or expert physician assistant consultant upon request at various intervals and with reasonable notice.

12. Tolling for Out-of-State Practice or Residence- The period of probation shall not run during the time respondent is residing or practicing outside the jurisdiction of California. If, during probation, respondent moves out of the jurisdiction of California to reside or practice elsewhere, including federal facilities, respondent is required to immediately notify the committee in writing of the date of departure, and the date of return, if any.

Respondent's license shall be automatically canceled if respondent's period of temporary or permanent residence or practice outside California totals two years. Respondent's license shall not be canceled as long as respondent is residing and practicing as a physician assistant in another state of the United States and is on active probation with the physician assistant licensing authority of that state, in which case the two year period shall begin on the date probation is completed or terminated in that state.

13. Failure to Practice as a Physician Assistant – California Resident- In the event respondent resides in California and for any reason respondent stops practicing as a

physician assistant in California, respondent shall notify the committee or its designee in writing within 30 calendar days prior to the dates of non-practice and return to practice. Any period of non-practice within California, as defined in this condition, will not apply to the reduction of the probationary term and does not relieve respondent of the responsibility to comply with the terms and conditions of probation. Non-practice is defined as any period of time exceeding 30 calendar days in which respondent is not practicing as a physician assistant.

All time spent in a clinical training program that has been approved by the committee or its designee, shall be considered time spent in the practice of medicine. For purposes of this condition, non-practice due to a committee ordered suspension or in compliance with any other condition or probation, shall not be considered a period of non-practice.

Respondent's license shall be automatically canceled if, for a total of two years, respondent resides in California and fails to practice as a physician assistant.

14. Unannounced Clinical Site Visit- The committee or its designee may make unannounced clinical site visits at any time to ensure that respondent is complying with all terms and conditions of probation.

15. Condition Fulfillment- A course, evaluation, or treatment completed after the acts that gave rise to the charges in the accusation but prior to the effective date of the decision may, in the sole discretion of the committee or its designee, be accepted towards the fulfillment of the condition.

16. Completion of Probation- Respondent shall comply with all financial obligations (e.g., cost recovery, probation costs) no later than 60 calendar days prior to the completion of probation. Upon successful completion of probation, respondent's license will be fully restored.

17. Violation of Probation- If respondent violates probation in any respect, the committee after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against respondent during probation, the committee shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

18. Probation Monitoring Costs- Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the committee, which may be adjusted on an annual basis. The costs shall be made payable to the Physician Assistant Committee and delivered to the committee no later than January 31 of each calendar year.

19. Voluntary License Surrender- Following the effective date of this probation, if respondent ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy the terms and conditions of probation, respondent may request the voluntarily

surrender of respondent's license to the committee. The committee reserves the right to evaluate the respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall within 15 days deliver respondent's wallet and wall certificate to the committee or its designee and shall no longer practice as a physician assistant. Respondent will no longer be subject to the terms and conditions of probation and the surrender of respondent's license shall be deemed disciplinary action. If respondent re-applies for a physician assistant license, the application shall be treated as a petition for reinstatement of a revoked license.

DATED: _____

6/23/09



STEPHEN E. HJELT
Administrative Law Judge
Office of Administrative Hearings